

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3802 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DEESA AGRICULTURAL PRODUCE MARKET COMMITTEE, DEESA

Versus

DEESA MUNICIPALITY & COLLECTOR, BANASKANTHA

Appearance:

MR PR JOSHI for Petitioner

None present for Respondent No. 1

MR SAMIR DAVE for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03-03-97

C.A.V. JUDGEMENT

1. Heard learned counsel for the parties.

2. The petitioner, Deesa Agricultural Produce Market Committee, Deesa, filed this Special Civil Application and prayer has been made to restrain the respondents from allotting and giving possession of the lands of public street, surrounding roads of principal market yard of the

petitioner-committee. The prayer has also been made for the grant of interim relief.

3. The facts of the case are that, there is a principal market yard which has been constituted under section 7 of the Gujarat Agricultural Produce Market Act, 1963, in the city survey No.323 of Deesa town. The said principal market yard is surrounded by public roads on all the four sides. To the west of the said principal yard there is a 80 ft. road going to Station. To the north, there is a 40 ft. wide road. To the east, the width of the road is 30 ft. and to the south, the width of the road is 80 ft.. The agricultural produces which are being brought by the farmers are sold in the principal market yard. Many vehicles, trucks, carts, tempos etc. come with the agricultural produces for the purpose of selling in the principal market yard from different villages in the State of Gujarat. So it is the contention of the petitioner that all the roads on four sides of the principal market yard remains full with the vehicular traffic right from the early morning till late in night. The roads to the west and north are mainly used by the vehicles which bring agricultural produces to the principal market yard for sale. Encroachments have been made in the past on the said roads by cabin holders and larry gallas. That gave cause to the petitioner for filing of the civil suit for the removal of those cabins and larry gallas.

4. The learned counsel for the petitioner has stated before this court that the said civil suit, being regular Civil Suit No.50/86 has been withdrawn by the petitioner on 8-8-1991. A zerox copy of the application, Ex.86 and the order made thereon has also been filed by the petitioner's counsel, which is on record.

5. The petitioner has stated that the encroachment which has been made, has been removed, but the respondent-Municipality which is a Municipality under the Gujarat Municipalities Act, 1963, wants to construct shops on all the four roads surrounding the principal market yard, and for that purpose, the respondent-Municipality has made plots, and is trying to allot the said plots on rent to the people. The persons who would be allotted the plots will be permitted to construct shops on the plots of the land by Deesa Municipality. A rough sketch map has also been filed by the petitioner on the record showing the existing principal market yard on the city survey no.323 of Deesa, Dist. Banaskantha. This action of the respondent-Municipality has been challenged by the

petitioner by this Special Civil Application.

6. This petition has come up for admission before this court on 31st July, 1986, on which day, notice was issued and the respondents were directed to maintain the status-quo. Rule was issued on 9th October, 1986 and interim relief granted earlier was ordered to be continued.

7. The learned counsel for the petitioner contended that the respondent-Deesa Municipality has no authority or competence to allot the lands of roads for raising the construction of shops to different persons. The roads are to be preserved as such, and it cannot be allowed or be permitted even by the Deesa Municipality for the purpose other than the public thoroughfare. The Deesa Municipality has not filed any reply to this Special Civil Application. So all the facts stated in the Special Civil Application stands uncontroverted. The counsel for the petitioner further contended that the action of the Deesa Municipality of reducing the width of the roads, surrounding the principal market yard, would be illegal and contrary to the provisions of sec.146 of the Gujarat Municipalities Act.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Here is a dispute in between the petitioner, Deesa Agricultural Produce Market Committee, Deesa, Dist. Banaskantha and Deesa Municipality. The Deesa Agricultural Produce Market Committee, is a market committee, constituted under the Gujarat Agricultural Produce Market Act, 1963. So it is a statutory committee. Similarly, the Deesa Municipality is a Municipality, constituted under the Gujarat Municipalities Act, 1963. So it is also a statutory authority. So here is a case where dispute has been brought by one statutory committee before this court against another statutory authority, the Municipality. The petitioner has not approached to the State Government or to the District Collector before approaching to this court with the grievance made in this Special Civil Application. Both the authorities have to act under the framework of the Act under which the same has been constituted. If one statutory authority proposes to act contrary to the provisions of the Act under which it was constituted and which act may cause some difficulty or inconvenience to another statutory authority constituted under the Act, the proper course to resolve this dispute is to approach to the State Government, which precisely has not been done in the present case.

9. The statutory authority of the nature to which the petitioner belongs, and the respondent-Municipality belongs, cannot be permitted to spend money which is a public money in litigating amongst themselves.

10. In the case of O.N.G.C. vs. Collector, Central Excise reported in JT 1991 (4) SC 158, the Hon'ble Supreme Court has held that the petition by one department against another or public sector undertaking or State does not lie unless the clearance is given by the Government. The Hon'ble Supreme Court in the aforesaid case has given out the direction to the Central Government for constitution of a high power committee for the purpose of resolving out the disputes inter-se the department against the department or the public sector undertaking against State or vice-versa. Only in case, the high power committee gives the clearance to the party concerned, then only the litigation could have been brought before this court and not otherwise.

11. In the past, in many cases of the nature where the dispute was in between the State or the Corporation or the statutory authority like, Agricultural Produce Market Committee or the Municipality or the Corporation, this Court has given direction to the State of Gujarat for constitution of high power committee on the line as suggested by the Hon'ble Supreme Court in the case of O.N.G.C. vs. Collector, Central Excise (supra), so that the litigations of this nature may not come before this court. This court has not been informed whether the State Government has complied with the direction given by this Court in those cases or not. But this court will not permit the petitioner and the respondent-Deesa Municipality to litigate on this issue before this court without first approaching to the State Government. The dispute of the nature which has been raised in the present case is of the nature which can effectively and purposely be decided by the State Government.

12. As I am of the opinion, that this matter be sent to the State Government, I do not consider it to be appropriate to express any opinion on merits on the contentions made by the learned counsel for the petitioner.

13. In the result, this writ petition is disposed of with the direction to the Chief Secretary to the State of Gujarat to constitute a high power committee consisting of minimum three members under his own Chairmanship. The other two officers be the Senior I.A.S Officers of the

rank of Secretary of the departments concerned i.e. the department which deals with the Municipalities and Agricultural Produce Market Committees. If both these departments are under one Secretary then the third Secretary from any department may be nominated as a member.

14. The petitioner may submit a detailed representation in connection with its grievance made in this Special Civil Application to the Chief Secretary of the State of Gujarat within a period of two months from the date of receipt of certified copy of this order, and on receipt of this representation the aforesaid Committee may be constituted and the matter may be decided as expeditiously as possible, but not later than three months from the date of constitution thereof. The petitioner as well as the respondent, Deesa Municipality, may be given an opportunity of hearing in the matter. The Deesa Municipality has a right of filing its own objections against the representation of the petitioner. The petitioner will send a copy of the representation to be filed by it before the Chief Secretary, to the Deesa Municipality by registered post A.D.. In case, the Committee is unable to settle the dispute between the parties then only on its certification, the petitioner may have a liberty to approach to the Court of law and not otherwise.

15. The interim relief which has been granted by this court shall continue till the matter is decided by the high power committee as directed. Rule is made absolute in the aforesaid terms with no order as to costs.

16. The office is directed to send a copy of this order to the Chief Secretary to the State of Gujarat at Gandhinagar.

zgs/-